IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 366 of 2000

Reserved on.: 19.6.2008

Date of decision : 30.7.2008

Anita Thakur Petitioner

Versus

Lt. Col. Brij Kumar Bhardwaj. Respondent

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] *No.*

For the petitioner: Mr. P.C.Sharma, Advocate.

For the Respondent: Mr. Bimal Gupta, Advocate.

Deepak Gupta, J.

This petition under Section 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the Act) is directed against the judgement of the learned Appellate Authority, Sirmaur at Nahan in Rent Appeal No. 24-RA/14 of 1999 decided on 3rd November, 2000, whereby the appeal filed by the landlord has been allowed and the order of the Rent Controller set-aside.

The admitted facts are that the respondent is the landlord of the demised premises. The premises in question consist of a double storey residential property

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

known as Shiv Cottage situate at Ward No.7, Nahan. Out of this building, premises comprising of two rooms, one kitchen, latrine and bath room including verandah on 1st floor were rented out to the petitioner (hereinafter referred to as the tenant) on a monthly rent of Rs.700/- per month.

The landlord filed an eviction petition on 25.9.1998 for ejectment of the tenant on three grounds: (i) Arrears of rent w.e.f. 1.11.1994 onwards; (ii) that the landlord bonafide requires the tenanted premises for his own use and occupation; and (iii) that the tenant and her family members have created a nuisance.

The tenant opposed the eviction petition. According to her, the rent was not Rs.700/- per month but only Rs.70/- per month. She also denied that she had not paid the rent and according to her she had paid rent upto 31.12.1996 to the mother of the petitioner. The learned Rent Contorller decided the petition against the landlord and dismissed the same. The landlord filed an appeal under the Act to the Appellate Authority. The Appellate Authority came to the conclusion that the rent was only Rs.70/- per month and not Rs.700/- per month and also held that the rent had been paid by the tenant upto 31.12.1996 and therefore she was in arrears of rent only from 1.1.1997 onwards. The Rent Controller also

went on to hold that the premises are bona fide required by the landlord for his own use and occupation. Issue of nuisance was decided against the landlord. Consequently, the order of eviction was passed against the tenant on two grounds, i.e. arrears of rent and bonafide requirement. The rent has been paid within a period of 30 days and hence this ground does not survive. The tenant has filed the present petition and the only question which arises for consideration is whether the landlord requires the premises for his bonafide use and occupation.

I have heard Shri P.C.Sharma, learned counsel for the tenant as well as Shri Bimal Gupta, learned counsel for the respondent and have also gone through the record.

The site plan of the building has been exhibited as Ext.P-2 and the correctness of the same is not denied. The ground floor according to the site plan consists of one drawing room measuring 11' x 20' 4-1/2", two bed rooms measuring 11 feet x 10 feet and 12-1/2 feet x 9 feet, respectively. There is also one dining room measuring 10' x 12'.3". In addition thereto, there is a kitchen, two stores, a latrine and bath room on the ground floor. The upper storey consists of two bed rooms and a store which were occupied by the tenant.

There is a drawing cum dining room measuring 10'x9" x 13', a kitchen, a store, etc, which are in possession of the landlord. There is a latrine and bath room which were not in exclusive possession of the tenant but were shared by her and one Shri V.K.Tyagi who was in possession of the remaining portion of the first floor which has now been handed over to the landlord.

Admitted facts are that the landlord is an army officer and has retired from the army as a Lieutenant Colonel. According to the landlord, he has converted the two bed rooms in the ground floor into one large master bed room and therefore, according to the landlord he is only in possession of one bed room on the ground floor and one on the first floor. The family of the landlord consists of himself, his wife, son and two daughters at the time when the petition was filed one of the daughters was married. It has also come in evidence that the other son and daughter do not permanently reside at Nahan with the landlord but visit him off and on. The landlord has put up a claim that he requires one bed room for himself and his wife, one bed room for each of his unmarried son and daughter, one room for Puja and one room for the guests and married daughter. Thus, according to the landlord he requires four bed rooms, one Puja room in addition to drawing room and dining room,

whereas he has only two bed rooms, a drawing room and a dining room in his possession.

By now, the law is well established that the landlord is the best judge of his requirements. However, the requirements has to be bonafide.

The landlord is a retired Army Officer. According to him he has converted the two bed rooms on the ground floor to one master bed room. This leaves with him only one bed room on the top floor if he converts the dining room to a bed room. In the first floor there is only one latrine and bath room and the person of the status of the landlord can not be expected to share this bath room and toilet with the tenant. All the family members of the landlord are well settled in life. They would be visiting him off and on. Therefore, even if the demand of the landlord for four bed rooms is not accepted it would be reasonable to assume that the landlord requires at least three bed rooms. He would also require that the bed rooms have attached bath rooms so that he and his guests do not feel any difficulty. Once there is only one bed room in the ground floor he will require the two bed rooms on the top floor alongwith bath room. His requirement for a separate Puja room is also genuine. It would also be significant to note that during the course of the petition, the landlord had filed an

application that the tenant had shifted from the premises in question. Shri P.C.Sharma, counsel for the tenant had submitted that he had no instructions in the matter. Therefore, on 25.8.2006 the then Hon'ble Chief Justice had appointed Shri Deepak Kaushal, an advocate of this Court as Local Commissioner to visit the spot. Shri Deepak Kaushal has submitted his report alongwith the photographs. This report clearly shows that the premises in question are lying locked for long. The Local Commissioner had opened the lock in terms of the order of the Court and had found that the premises were lying closed for a long time and even the electricity connection to the said premises had been disconnected. No objections have been filed to the report of the Local Commissioner. It would also be pertinent to mention that a stay order had been passed in favour of the tenant on 4.12.2000. According to the counsel for the tenant despite this stay order the landlord took forcible possession of the premises and therefore, the tenant was compelled to file a contempt petition being COPC No. 41 of 2001. This contempt petition was unconditionally withdrawn by the tenant on 24.5.2002, which shows that she was not serious in her contention that she had been forcibly evicted. It is apparent that the tenant is no longer interested in residing in the premises and has

voluntarily abandoned the same. She is fighting this litigation only to harass the landlord. As such, I feel that the order of the learned lower Appellate Court calls for no interference.

Shri P.C.Sharma, has strenuously argued that landlord has failed to prove the requirements of law as required under the law. In support of his contention, he has relied upon the judgement of the apex Court **Onkar Nath v. Ved Vyas** ***ILR (Himachal Series) 1979, Page-1.*** I am afraid that this judgement is of no use in the present case. On a perusal of the rent petition and the evidence, it is apparent that all material facts have been pleaded and proved. Further more in view of the fact that tenant has voluntarily left the premises, I do not feel that this should be a ground to reject the eviction petition. The tenant has left the premises and has not even paid the rent thereafter. She, therefore, has no right to continue to occupy the premises.

In view of the above discussion, the petition is dismissed. No order as to costs.

30th July, 2008 (Deepak Gupta), J.

™